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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all)

others similarly situated,)

Plaintiff,)

vs.)

POWER FUNDING LLC; and DOES 1)
 through 10, inclusive,)

Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
 individually and on behalf of all others similarly situated, alleges the following
 upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1
2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of POWER FUNDING LLC
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
8 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

9
10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
11 a California corporation with its principle place of business also in California,
12 seeks relief on behalf of a Class, which will result in at least one class member
13 belonging to a different state than that of Defendant, a Missouri company.
14 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
15 TCPA, which, when aggregated among a proposed class in the thousands,
16 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
17 both diversity jurisdiction and the damages threshold under the Class Action
18 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Northern
20 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
21 business within the State of California and Plaintiff resides within the County of
22 Alameda.

PARTIES

23
24 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
25 is a rooting and plumbing business in Emeryville, California and is a “person” as
26 defined by 47 U.S.C. § 153 (39).

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1 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

2 12. Defendant's calls were placed to telephone number assigned to a
3 cellular telephone service for which Plaintiff incurs a charge for incoming calls
4 pursuant to 47 U.S.C. § 227(b)(1).

5 13. During all relevant times, Defendant did not possess Plaintiff's
6 "prior express consent" to receive calls using an automatic telephone dialing
7 system or an artificial or prerecorded voice on its cellular telephones pursuant to
8 47 U.S.C. § 227(b)(1)(A).

9 14. Furthermore, Plaintiff's cellular telephone number ending in -0106
10 have been on the National Do-Not-Call Registry well over thirty (30) days prior
11 to Defendant's initial calls.

12 15. Defendant's placed call soliciting its business to Plaintiff on its
13 cellular telephone constitute solicitation calls pursuant to 47 C.F.R. §
14 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

15 16. Plaintiff never granted Defendant any prior express consent nor was
16 any established business relationship with Defendant in existence as defined
17 under 16 C.F.R. 310.4(b)(1)(iii)(B).

18 17. Despite this, Defendant continued to call Plaintiff in an attempt to
19 solicit its services and in violation of the National Do-Not-Call provisions of the
20 TCPA.

21 18. Upon information and belief, and based on Plaintiff's experiences of
22 being called by Defendant after requesting they stop calling, and at all relevant
23 times, Defendant failed to establish and implement reasonable practices and
24 procedures to effectively prevent telephone solicitations in violation of the
25 regulations prescribed under 47 U.S.C. § 227(c)(5).

26 **CLASS ALLEGATIONS**

27 19. Plaintiff brings this action individually and on behalf of all others
28 similarly situated, as a member the four proposed classes (hereafter, jointly, "The

1 Classes”). The class concerning the ATDS claim for no prior express consent
2 (hereafter “The ATDS Class”) is defined as follows:

3 All persons within the United States who received any
4 solicitation/telemarketing telephone calls from
5 Defendant to said person’s cellular telephone made
6 through the use of any automatic telephone dialing
7 system or an artificial or prerecorded voice and such
8 person had not previously consented to receiving such
9 calls within the four years prior to the filing of this
10 Complaint

11 20. The class concerning the ATDS claim for revocation of consent, to
12 the extent prior consent existed (hereafter “The ATDS Revocation Class”) is
13 defined as follows:

14 All persons within the United States who received any
15 solicitation/telemarketing telephone calls from
16 Defendant to said person’s cellular telephone made
17 through the use of any automatic telephone dialing
18 system or an artificial or prerecorded voice and such
19 person had revoked any prior express consent to receive
20 such calls prior to the calls within the four years prior to
21 the filing of this Complaint.

22 21. The class concerning the National Do-Not-Call violation (hereafter
23 “The DNC Class”) is defined as follows:

24 All persons within the United States registered on the
25 National Do-Not-Call Registry for at least 30 days, who
26 had not granted Defendant prior express consent nor
27 had a prior established business relationship, who
28 received more than one call made by or on behalf of
Defendant that promoted Defendant’s products or
services, within any twelve-month period, within four
years prior to the filing of the complaint.

1 22. The class concerning the National Do-Not-Call violation following
2 revocation of consent and prior business relationship, to the extent they existed
3 (hereafter “The DNC Revocation Class”) is defined as follows:

4 All persons within the United States registered on the
5 National Do-Not-Call Registry for at least 30 days, who
6 received more than one call made by or on behalf of
7 Defendant that promoted Defendant’s products or
8 services, after having revoked consent and any prior
9 established business relationship, within any twelve-
10 month period, within four years prior to the filing of the
11 complaint.

12 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
13 of all persons within the United States who received any solicitation telephone
14 calls from Defendant to said person’s cellular telephone made through the use of
15 any automatic telephone dialing system or an artificial or prerecorded voice and
16 such person had not previously not provided their cellular telephone number to
17 Defendant within the four years prior to the filing of this Complaint.

18 24. Plaintiff represents, and is a member of, The ATDS Revocation
19 Class, consisting of all persons within the United States who received any
20 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
21 telephone made through the use of any automatic telephone dialing system or an
22 artificial or prerecorded voice and such person had revoked any prior express
23 consent to receive such calls prior to the calls within the four years prior to the
24 filing of this Complaint.

25 25. Plaintiff represents, and is a member of, The DNC Class, consisting
26 of all persons within the United States registered on the National Do-Not-Call
27 Registry for at least 30 days, who had not granted Defendant prior express
28 consent nor had a prior established business relationship, who received more than
one call made by or on behalf of Defendant that promoted Defendant’s products

1 or services, within any twelve-month period, within four years prior to the filing
2 of the complaint.

3 26. Plaintiff represents, and is a member of, The DNC Revocation Class,
4 consisting of all persons within the United States registered on the National Do-
5 Not-Call Registry for at least 30 days, who received more than one call made by
6 or on behalf of Defendant that promoted Defendant's products or services, after
7 having revoked consent and any prior established business relationship, within
8 any twelve-month period, within four years prior to the filing of the complaint.

9 27. Defendant, their employees and agents are excluded from The
10 Classes. Plaintiff does not know the number of members in The Classes, but
11 believes the Classes members number in the thousands, if not more. Thus, this
12 matter should be certified as a Class Action to assist in the expeditious litigation
13 of the matter.

14 28. The Classes are so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Classes
16 members are unknown to Plaintiff at this time and can only be ascertained
17 through appropriate discovery, Plaintiff is informed and believes and thereon
18 alleges that The Classes includes thousands of members. Plaintiff alleges that
19 The Classes members may be ascertained by the records maintained by
20 Defendant.

21 29. Plaintiff and members of The ATDS Class and The ATDS
22 Revocation Class were harmed by the acts of Defendant in at least the following
23 ways: Defendant illegally contacted Plaintiff and ATDS Class members via their
24 cellular telephones thereby causing Plaintiff and ATDS Class and ATDS
25 Revocation Class members to incur certain charges or reduced telephone time for
26 which Plaintiff and ATDS Class and ATDS Revocation Class members had
27 previously paid by having to retrieve or administer messages left by Defendant
28 during those illegal calls, and invading the privacy of said Plaintiff and ATDS

1 Class and ATDS Revocation Class members.

2 30. Common questions of fact and law exist as to all members of The
3 ATDS Class which predominate over any questions affecting only individual
4 members of The ATDS Class. These common legal and factual questions, which
5 do not vary between ATDS Class members, and which may be determined
6 without reference to the individual circumstances of any ATDS Class members,
7 include, but are not limited to, the following:

- 8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendant made any telemarketing/solicitation call
10 (other than a call made for emergency purposes or made with
11 the prior express consent of the called party) to a ATDS Class
12 member using any automatic telephone dialing system or any
13 artificial or prerecorded voice to any telephone number
14 assigned to a cellular telephone service;
- 15 b. Whether Plaintiff and the ATDS Class members were
16 damaged thereby, and the extent of damages for such
17 violation; and
- 18 c. Whether Defendant and their agents should be enjoined from
19 engaging in such conduct in the future.

20 31. As a person that received numerous telemarketing/solicitation calls
21 from Defendant using an automatic telephone dialing system or an artificial or
22 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
23 claims that are typical of The ATDS Class.

24 32. Common questions of fact and law exist as to all members of The
25 ATDS Revocation Class which predominate over any questions affecting only
26 individual members of The ATDS Revocation Class. These common legal and
27 factual questions, which do not vary between ATDS Revocation Class members,
28 and which may be determined without reference to the individual circumstances

1 of any ATDS Revocation Class members, include, but are not limited to, the
2 following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant made any telemarketing/solicitation call
5 (other than a call made for emergency purposes or made with
6 the prior express consent of the called party) to an ATDS
7 Revocation Class member, who had revoked any prior express
8 consent to be called using an ATDS, using any automatic
9 telephone dialing system or any artificial or prerecorded voice
10 to any telephone number assigned to a cellular telephone
11 service;
- 12 b. Whether Plaintiff and the ATDS Revocation Class members
13 were damaged thereby, and the extent of damages for such
14 violation; and
- 15 c. Whether Defendant and their agents should be enjoined from
16 engaging in such conduct in the future.

17 33. As a person that received numerous telemarketing/solicitation calls
18 from Defendant using an automatic telephone dialing system or an artificial or
19 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
20 is asserting claims that are typical of The ATDS Revocation Class.

21 34. Plaintiff and members of The DNC Class and DNC Revocation
22 Class were harmed by the acts of Defendant in at least the following ways:
23 Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation
24 Class members via their telephones for solicitation purposes, thereby invading the
25 privacy of said Plaintiff and the DNC Class and DNC Revocation Class members
26 whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff
27 and the DNC Class and DNC Revocation Class members were damaged thereby.

28 35. Common questions of fact and law exist as to all members of The

1 DNC Class which predominate over any questions affecting only individual
2 members of The DNC Class. These common legal and factual questions, which
3 do not vary between DNC Class members, and which may be determined without
4 reference to the individual circumstances of any DNC Class members, include,
5 but are not limited to, the following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant or its agents placed more than one
8 solicitation call to the members of the DNC Class whose
9 telephone numbers were on the National Do-Not-Call Registry
10 and who had not granted prior express consent to Defendant
11 and did not have an established business relationship with
12 Defendant;
- 13 b. Whether Defendant obtained prior express written consent to
14 place solicitation calls to Plaintiff or the DNC Class members'
15 telephones;
- 16 c. Whether Plaintiff and the DNC Class member were damaged
17 thereby, and the extent of damages for such violation; and
- 18 d. Whether Defendant and their agents should be enjoined from
19 engaging in such conduct in the future.

20 36. As a person that received numerous solicitation calls from Defendant
21 within a 12-month period, who had not granted Defendant prior express consent
22 and did not have an established business relationship with Defendant, Plaintiff is
23 asserting claims that are typical of the DNC Class.

24 37. Common questions of fact and law exist as to all members of The
25 DNC Class which predominate over any questions affecting only individual
26 members of The DNC Revocation Class. These common legal and factual
27 questions, which do not vary between DNC Revocation Class members, and
28 which may be determined without reference to the individual circumstances of

any DNC Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had revoked any prior express consent and any established business relationship with Defendant;
- b. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

38. As a person that received numerous solicitation calls from Defendant within a 12-month period, who, to the extent one existed, had revoked any prior express consent and any established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Revocation Class.

39. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

40. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class

1 action presents fewer management difficulties, conserves the resources of the
2 parties and of the court system, and protects the rights of each Classes member.

3 41. The prosecution of separate actions by individual Classes members
4 would create a risk of adjudications with respect to them that would, as a practical
5 matter, be dispositive of the interests of the other Classes members not parties to
6 such adjudications or that would substantially impair or impede the ability of such
7 non-party Class members to protect their interests.

8 42. Defendant have acted or refused to act in respects generally
9 applicable to The Classes, thereby making appropriate final and injunctive relief
10 with regard to the members of the Classes as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(b).**

14 **On Behalf of the ATDS Class and ATDS Revocation Class**

15 43. Plaintiff repeats and incorporates by reference into this cause of
16 action the allegations set forth in the paragraphs above.

17 44. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in
20 particular *47 U.S.C. § 227 (b)(1)(A)*.

21 45. As a result of Defendant's negligent violations of *47 U.S.C. §*
22 *227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in
23 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
24 *227(b)(3)(B)*.

25 46. Plaintiff and the ATDS Class and ATDS Revocation Class members
26 are also entitled to and seek injunctive relief prohibiting such conduct in the
27 future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

47. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

48. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

49. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

50. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

51. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

52. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

53. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

54. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

55. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

56. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

57. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

58. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for

each and every violation, pursuant to 47 U.S.C. 227(c)(5).

- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

59. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 30th Day of October, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff